

HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MCGUIRE

Introduced: 4/10/03

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the State Medical Board; and amending Rule 609(b), Alaska Rules
2 of Appellate Procedure."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 08.64.103 is amended to read:

5 **Sec. 08.64.103. Investigator; executive secretary.** (a) After consulting with
6 the board, the department shall employ two persons who are not members of the
7 board; one shall be assigned as the investigator for the board; the other shall be
8 assigned as the executive secretary for the board. Subject to the provisions of (b) -
9 (f) of this section, the [THE] investigator shall

10 (1) conduct investigations into alleged violations of this chapter and
11 into alleged violations of regulations and orders of the board;

12 (2) at the request of the board, conduct investigations based on
13 complaints filed [WITH THE DEPARTMENT OR] with the board; and

14 (3) be directly responsible and accountable to the board, except that

1 only the department has authority to terminate the investigator's employment and the
2 department shall provide day to day and administrative supervision of the investigator.

3 * **Sec. 2.** AS 08.64.103 is amended by adding new subsections to read:

4 (b) In matters assigned to the investigator, the investigator shall promptly
5 make a preliminary determination. If the preliminary determination is that a complaint
6 or alleged violation of this chapter is frivolous, trivial, unfounded, or outside the scope
7 of the board's jurisdiction, or there is insufficient evidence to warrant a full
8 investigation, the investigator shall terminate the investigation and, by the next
9 meeting of the board, notify the board and the department of the termination. A
10 licensee who is the subject of an investigation terminated under this subsection is not
11 considered to have been the subject of a disciplinary investigation.

12 (c) If an investigator does not terminate an investigation under (b) of this
13 section, the investigator may proceed with the investigation only if a member of the
14 board has reviewed the matter and determined that there is sufficient justification to
15 proceed further with the investigation. If the subject of the investigation is a
16 physician, the reviewing board member shall be a physician. If a board member
17 determines that an investigation should proceed, the complaint or allegation is
18 considered to be a formal complaint or allegation. If no board member authorizes the
19 investigator to proceed with the investigation, the investigator shall terminate the
20 investigation. A licensee who is the subject of an investigation terminated under this
21 subsection is not considered to have been the subject of a disciplinary investigation. A
22 board member who authorizes continuation of an investigation under this subsection is
23 not precluded from participating in a subsequent disciplinary proceeding about the
24 complaint or allegation based solely on the authorization to continue the investigation.

25 (d) A person licensed under this chapter has 30 days to respond to a request
26 from an investigator for information unless the investigator has obtained a court order
27 from the superior court requiring production of information in less than 30 days.

28 (e) An investigator may not make a verbatim recording in any manner of a
29 conversation that is part of an investigation under this section unless the investigator
30 has informed all of the other parties to the conversation of the intent to record the
31 conversation before recording it, an acknowledgment of each party's consent to the

1 recording is contained on the recording, and the investigator has made each person
2 aware of all parties that are present at the investigator's end of the conversation.

3 (f) An investigator may not offer to settle a potential or actual disciplinary
4 action against a person licensed under this chapter by way of a memorandum of
5 agreement or similar document unless a majority of the membership of the board has
6 approved the offer before is it presented to the licensee.

7 (g) A licensee about whom an investigation has been conducted shall be
8 informed by the board within 30 days after

9 (1) an investigation is terminated under (b) or (c) of this section; or

10 (2) the board decides not to impose a disciplinary sanction after a
11 complaint or allegation becomes a formal complaint under (c) of this section.

12 * **Sec. 3.** AS 08.64.130(a) is amended to read:

13 (a) **Except as provided in (d) of this section, the** [THE] board shall preserve
14 a record of its proceedings, which must contain the name, age, residence, and duration
15 of residence of each applicant for a license, the time spent by the applicant in medical
16 study, the place of medical study, and the year and school from which degrees were
17 granted. The record must also show whether the applicant was granted a license or
18 rejected.

19 * **Sec. 4.** AS 08.64.130 is amended by adding a new subsection to read:

20 (d) Board records concerning an investigation that was terminated under
21 AS 08.64.103(b) or (c) or for which no disciplinary action was taken after the
22 complaint or allegation became a formal complaint under AS 08.64.103(c) are
23 confidential and not subject to public inspection or copying under AS 40.25.110 -
24 40.25.220.

25 * **Sec. 5.** AS 08.64.160 is amended to read:

26 **Sec. 08.64.160. Applicability of Administrative Procedure Act. (a)** The
27 board shall comply with AS 44.62 (Administrative Procedure Act) **with respect to**
28 **adoption of regulations. The board shall comply with AS 44.62.330 - 44.62.630 as**
29 **to matters covered by those sections except to the extent that the provisions of (b)**
30 **- (f) of this section are inconsistent with AS 44.62.330 - 44.62.630; in those**
31 **matters, (b) - (f) of this section shall take precedence.**

1 * **Sec. 6.** AS 08.64.160 is amended by adding new subsections to read:

2 (b) The board may not delegate to a hearing officer the board's authority to act
3 in relation to, to hear, or to decide a case that is covered by AS 44.62.330 - 44.62.630.
4 The chair of the board shall preside over a hearing required under AS 44.62.450 unless
5 disqualified under AS 44.62.450(c), in which case the remaining members of the
6 board shall select from among themselves a member who is qualified to preside over
7 the hearing. The board may not assign to a hearing officer the reconsideration of a
8 decision under AS 44.62.540.

9 (c) A member of the board who has heard or attested in writing to having
10 reviewed the evidence may participate in a decision governed by AS 44.62.330 -
11 44.62.630.

12 (d) The board shall render a decision, which must include proposed sanctions,
13 within 60 days after completion of a hearing held under AS 44.62.330 - 44.62.630.
14 The board shall render its decision at a meeting that coincides with a regularly
15 scheduled meeting of the board unless a regularly scheduled meeting of the board will
16 not be held within 60 days after completion of the hearing held under AS 44.62.330 -
17 44.62.630. Unless an emergency situation exists that would result in immediate harm
18 to the public if board action is delayed by more than 10 days, the licensee and the
19 licensee's attorney, if any, shall be given at least 10 days' written notice of a board
20 meeting at which a decision will be rendered about a disciplinary sanction. At the
21 meeting where a decision will be rendered about a disciplinary sanction, the board
22 must afford the licensee the opportunity to provide oral and written testimony from
23 any source regarding the proposed sanction before the board makes its decision.

24 (e) Except in a case that involves illegal procurement, sale, dispensing, or
25 prescription of drugs, or otherwise involves an intentional act or omission that violates
26 state or federal laws relating to drugs, and notwithstanding AS 44.62.570(d), if a
27 decision of the board to revoke a license, suspend a license for more than 30 days, or
28 impose a fine greater than \$10,000 is timely appealed to the superior court,

29 (1) the court shall hold the hearing on the appeal de novo if requested
30 by the licensee; and

31 (2) the licensee is entitled to a jury trial on request.

1 (f) In a disciplinary action against a licensee, the board has the burden of proof
 2 by clear and convincing evidence except that, if the disciplinary action involves illegal
 3 procurement, sale, dispensing, or prescription of drugs, or otherwise involves an
 4 intentional act or omission that violates state or federal laws relating to drugs, the
 5 board has the burden of proof by a preponderance of the evidence.

6 * **Sec. 7.** AS 08.64.331(a) is amended to read:

7 (a) If the board finds **by clear and convincing evidence** that a licensee has
 8 committed an act set out in AS 08.64.326(a), the board may

9 (1) permanently revoke a license to practice;

10 (2) suspend a license for a determinate period of time;

11 (3) censure a licensee;

12 (4) issue a letter of reprimand;

13 (5) place a licensee on probationary status and require the licensee to

14 (A) report regularly to the board on matters involving the basis
 15 of probation;

16 (B) limit practice to those areas prescribed;

17 (C) continue professional education until a satisfactory degree
 18 of skill has been attained in those areas determined by the board to need
 19 improvement;

20 (6) impose limitations or conditions on the practice of a licensee;

21 (7) impose a civil fine of not more than \$25,000; or

22 (8) impose one or more of the sanctions set out in (1) - (7) of this
 23 subsection.

24 * **Sec. 8.** AS 08.64.331(c) is amended to read:

25 (c) The board may summarily suspend a license before final hearing or during
 26 the appeals process if the board finds **by clear and convincing evidence** that the
 27 licensee poses a clear and immediate danger to the public health and safety if the
 28 licensee continues to practice. A person whose license is suspended under this section
 29 is entitled to a hearing by the board **not** [NO] later than seven days after the effective
 30 date of the order and the person may appeal the suspension after a hearing to **the**
 31 **superior** [A] court [OF COMPETENT JURISDICTION].

1 * **Sec. 9.** AS 08.64.331 is amended by adding a new subsection to read:

2 (g) When considering imposition of a disciplinary sanction on a licensee, the
3 board shall consider the following factors: (1) the safety of the public, (2) the public's
4 need for medical care, and (3) the potential for rehabilitation of the licensee. When
5 considering imposition of a fine under this section, the board shall also consider the
6 ability of the licensee to pay the fine.

7 * **Sec. 10.** AS 44.62.330(a)(8) is repealed.

8 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 INDIRECT COURT RULE AMENDMENT. AS 08.64.160(e)(1), enacted by sec. 6
11 of this Act, has the effect of changing Rule 609(b), Alaska Rules of Appellate Procedure, by
12 limiting the court's discretion as to whether or not an appeal of certain decisions by the State
13 Medical Board will be heard by the court de novo.

14 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 CONDITIONAL EFFECT. AS 08.64.160(e)(1), enacted by sec. 6 of this Act, takes
17 effect only if sec. 11 of this Act receives the two-thirds majority vote of each house required
18 by art. IV, sec. 15, Constitution of the State of Alaska.